

on behalf of an SRO that needed the information for regulatory purposes. Thus, should the CBOE need information on Mexican trading in the Index component securities to investigate incidents involving trading of Index options, the SEC could request such information from the CNBV under the MOU. While this arrangement certainly would be enhanced by the existence of direct exchange to exchange surveillance sharing agreements, it is nonetheless consistent with other instances where the Commission has explored alternatives when the relevant foreign exchange was unwilling or unable to enter into a comprehensive surveillance sharing agreement.²⁵

Accordingly, the Commission believes the MOU provides sufficient basis for the exchange of necessary surveillance information. The Commission continues to believe strongly, however, that the Bolsa and the CBOE should continue to work together to consummate a formal surveillance sharing agreement to cover Mexico 30 Index options as soon as practicable.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-CBOE-95-45) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:²⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36425; File No. SR-DTC-94-16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amendment to a Proposed Rule Change Clarifying the Depository Trust Company's Policy on Depository-to-Depository Services and Fees

October 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 29, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-94-16) as

described in Items I, II, and III below, which Items have been prepared primarily by DTC. Notice of the proposal was published in the Federal Register on January 9, 1995.² One comment letter was received.³ On October 11, 1995, DTC filed an amendment to clarify the filing.⁴ Because the amendment changes the substance of the filing, the Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to clarify its policy regarding depository-to-depository services and fees by filing the following statement:

With respect to any other securities depository that is registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (a "depository"), neither DTC nor the other depository shall be obligated to pay each other the fees charged to participants by virtue of having executed participant agreements with one another. DTC shall provide services to the other depository, charges fees for those services, and pay for the services provided to DTC, all in accordance with the terms of a separate agreement, if any, between DTC and the other depository respecting such matters.

In the absence of any such separate agreement, however:

1. DTC shall make available to any other depository any service that DTC makes available to its Participants generally, provided that such depository makes its services available to DTC on the same basis.

2. DTC (i) shall not charge for the book-entry delivery services provided to the other depository nor pay for the book-entry delivery services provided by the other depository, (ii) shall charge DTC participant fees for services relating to the physical handling of certificates rendered by DTC to such depository and pay the other depository its participant fees for services relating to the physical handling of certificates rendered to DTC and (iii) shall charge the other depository and pay the other depository for "linked services" provided, if any.⁵ [Footnote original]

² Securities Exchange Act Release No. 35186 (December 30, 1994), 60 FR 2418.

³ Letter from J. Craig Long, Foley and Lardner [on behalf of the Midwest Securities Trust Company], to Jonathan G. Katz, Secretary, Commission (February 3, 1995).

⁴ Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Jerry W. Carpenter, Esq., Assistant Director, Division of Market Regulation, Commission (October 11, 1995).

⁵ The Commission has described linked services as arrangements where one depository ("servicing depository") performs for another depository ("using depository") the core tasks necessary to deliver the services to the using depository's participants. The Commission has cited as examples of linked services DTC's processing of ID confirmations and affirmations and DTC's fourth-

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁶

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to state DTC's policy with respect to depository-to-depository services and fees. DTC states that this policy statement reflects the practices that have been followed by DTC and the other depositories since the beginning of interdepository processing and is consistent with the Commission's expressed views concerning these matters.

From the very beginning of interdepository processing, in the mid-1970's and through the present, DTC and the other depositories have charged and paid each other for services rendered only such fees that have been negotiated. For example, in 1975, Pacific Securities Depository Trust Company ("PSDTC") declared that it would not pay or levy charges on the other depositories. In September 1976, DTC was informed of the unilateral determination by the Midwest Securities Trust Company ("MSTC") Board that as a matter of principle MSTC would discontinue paying DTC for services other than for physical withdrawals of certificates. In 1977, DTC, PSDTC, and MSTC formally agreed to provide most services to each other without charge ("no charge agreement"). At the present time, DTC has an informal agreement with the Philadelphia Depository Trust Company ("Philadelph") covering custody-related services. DTC and Philadelph charge each other their published fees for these services.

DTC states that the Commission has been aware of and has commented in its

party delivery service. The Commission has expressed the view that a servicing depository should be permitted to charge a using depository the same fee it charges its participants for the same or a similar service. Securities Exchange Act Release No. 23083 (March 31, 1986), 51 FR 12421.

⁶ The Commission has modified the text of the summaries prepared by DTC.

²⁵ See, e.g., Securities Exchange Act Release No. 36070 (Aug. 9, 1995), 60 FR 42205 (Aug. 15, 1995) (Order Approving Proposed Rule Changes Relating to the Listing and Trading of Warrants on the Deutscher Aktienindex).

²⁶ 15 U.S.C. § 78s(b)(2) (1988).

²⁷ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

releases on the practice followed by DTC and other depositories of paying each other only such fees as are negotiated rather than all fees charged to participants generally. DTC states that the Commission in its releases has never expressed the view that one depository by virtue of executing a participant agreement with another depository in order to establish the legal framework for an interface relationship thereby becomes subject to all of that other depository's published participant fees. DTC states that the Commission has expressed the belief that:

[R]egistered securities depositories are not similar to ordinary participants. Registered securities depositories are subject to special regulation that no other participants face, including a specific statutory charge to cooperate with other registered securities depositories. Thus, the Commission believes that a "no-charge" policy with respect to interface account activity does not result in an inequitable allocation of fees.⁷

DTC believes the proposed rule change is consistent with Section 17A(b)(3)⁸ of the Act. DTC believes that implementation of the subject policy will help assure that depository interface services are available to participants of any depository thereby promoting the goal of one-account settlement. DTC also states that the policy will enable DTC to avoid paying another depository inappropriately high fees that might effect its inefficient operation and to avoid paying another depository higher per-unit fees than such depository charges its participants generally.⁹ DTC believes that managing the fees paid to other depositories, which currently account for approximately 60% of DTC's total cost of providing interface services to its participants, will help reduce the fees that DTC must charge its participants to recover those costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that by promoting the goal of one-account settlement and by enabling DTC to control the interface costs that are paid by its participants, the proposed rule change would help promote competition among depository users.

⁷ Securities Exchange Act Release No. 20461 (December 7, 1983) at footnote 34.

⁸ 15 U.S.C. 78q-1(b)(3) (1988).

⁹ DTC states that the Commission has indicated that where one depository is entitled to charge another (e.g., for linked services), it expects that any offer of volume discounts to participants generally would also be made available to the other depository. Securities Exchange Act Release No. 23803 (March 31, 1986) at page 21.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register, or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-94-16 and should be submitted by November 22, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-36413; File No. SR-DTC-95-09]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Seeking To Establish a Legal Guidance System

October 25, 1995.

On April 27, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-95-09) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to establish a Legal Guidance System.¹ On July 25, 1995, DTC filed an amendment to the proposed rule change.² On August 22, 1995, DTC filed a second amendment to the proposed rule change.³ Notice of the proposal was published in the Federal Register on September 18, 1995.⁴ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

DTC will establish an inquiry-only Legal Guidance System ("LGS"), which is a menu-driven, user-friendly system designed to provide DTC participants and nonparticipants (e.g. transfer agents) with information regarding the documents necessary to effect a legal deposit.⁵ LGS will be accessible by DTC participants and nonparticipants through DTC's Participant Terminal System ("PTS"). LGS contains industry requirements, individual state and province requirements, and transfer agent requirements for processing legal deposits. DTC will post a disclaimer in the LGS user guide notifying users that DTC shall not be liable to the user for

¹ 15 U.S.C. 78s(b)(1) (1988).

² DTC amended its proposal to permit organizations that are not DTC participants, such as transfer agents, to subscribe to the Legal Guidance System. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation ("Division"), Commission (July 21, 1995).

³ As proposed in the original filing, once a user logged onto the Legal Guidance System a disclaimer of liability message was to appear on the terminal screen. DTC amended its proposal to eliminate this message, and instead the disclaimer will appear in a user guide for the Legal Guidance System to be provided to all users. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Peter Geraghty, Division, Commission (August 17, 1995).

⁴ Securities Exchange Act Release No. 36219 (September 12, 1995), 60 FR 48181.

⁵ A "legal deposit" consists of a registered security and any legal documentation required to effect the legal transfer and registration of the security from the registered holder's name into DTC's nominee name.